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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **OAKLAND DIVISION**
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13 IRWIN UNION BANK AND TRUST
14 COMPANY AND IRWIN HOME EQUITY
CORPORATION,

15 Plaintiffs,

16 v.

17 FREEDOM MORTGAGE COMPANY,

18 Defendants.
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CASE NO. 4:08-cv-00472-PJH

JOINT STATUS REPORT

Action filed: January 22, 2008

Assigned to The Hon. Phyllis J. Hamilton
Courtroom: 3

22 Pursuant to the Court's Order dated September 2, 2011 (Dkt. No. 39), Irwin Home Equity
23 Corporation ("IHE") and Freedom Mortgage Corporation ("Freedom") respectfully submit this
24 further joint status report.

25 1. The parties' last status report was filed on June 24, 2011 (Dkt. No. 38). In that
26 report, IHE stated that it would circulate a preliminary draft settlement agreement by July 27,
27 2011. IHE reports that on July 8, 2011, a non-party affiliate of IHE, Irwin Mortgage Corporation
28 ("IMC"), filed a Chapter 11 bankruptcy petition in the Southern District of Ohio. Although IMC

1 is not a party to the instant action, the parties' objective has always been to reach a global
2 settlement that would resolve all of the pending actions, one of which includes IMC.
3 Unfortunately, IMC's bankruptcy filing has delayed progress towards this objective. IHE's
4 understanding is that IMC is not yet in a position to consider a settlement, and such settlement, if
5 approved by IMC would be subject to further approval by the bankruptcy court. Nevertheless, to
6 demonstrate good faith, IHE has circulated two versions of a draft settlement agreement to
7 Freedom for review and comment, with the understanding that the drafts have not yet been
8 approved by the board or approving body of any party.

9 2. Based upon its investigation to date, IHE continues to believe that the consent and
10 participation of the FDIC in its role as receiver ("FDIC-R") for plaintiff Irwin Union Bank and
11 Trust Company ("IUBT") is necessary to achieve a global settlement of all disputes and claims
12 between the Irwin entities and Freedom, including not only the instant action, but also the matter
13 captioned *Freedom Mortgage Corp. v. Irwin Financial Corp., et al.*, Case No. 3:09-cv-01399-
14 MEJ (N.D. Cal.), as well as the arbitration proceeding captioned *Freedom Mortgage Company v.*
15 *Irwin Union Bank and Trust Company and Irwin Home Equity Corporation*, Case No.
16 MX080300205058323 (National Arbitration Forum).

17 3. Although IHE has continued to communicate with inside counsel for the FDIC-R
18 concerning its participation in this action, as well as regarding the proposed settlement, the
19 FDIC's in-house counsel has represented that the FDIC-R believes that because it is not a party
20 to this action, it need not participate in this action or in any settlement. IHE is awaiting a further
21 response from the FDIC.

22 4. IHE and Freedom remain interested in attempting to resolve this litigation and the
23 other pending matters. Given the position of the FDIC-R, and IMC's bankruptcy filing, the
24 parties seek additional time to determine whether a satisfactory settlement is possible.

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1 5. Based on the foregoing, IHE and Freedom therefore request that the Court set this
2 matter for further status review in March 2012.

3 Dated: October 31, 2011

WILSON SONSINI GOODRICH & ROSATI
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5 By: /s/ Nicole M. Healy
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10 Counsel for Irwin Home Equity Corporation

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12 Dated: October 31, 2011

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ATTESTATION

I, Nicole M. Healy, am the ECF User whose identification and password are being used to file this Joint Status Report. In compliance with General Order 45.X.B, I hereby attest that Jason C. Curliano has concurred in this filing.

Dated: October 31, 2011

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Nicole M. Healy
Nicole M. Healy

A CASE MANAGEMENT CONFERENCE WILL
BE HELD ON MARCH 29, 2012. A JOINT
CASE MANAGEMENT CONFERENCE
STATEMENT SHALL BE FILED BY
MARCH 22, 2012.

